

**HOUSE . . . . . No. 01002**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Ruth B. Balser*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the licensure of behavior analysts

□.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>

# HOUSE . . . . . No. 01002

By Ms. Ruth B. Balsemer of Newton, petition (accompanied by bill, House, No. 01002) of James J. O'Day and others relative to the licensure of behavior analysts. Joint Committee on Consumer Protection and Professional Licensure.

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the licensure of behavior analysts

□.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

- 1 SECTION 1. Chapter 13 of the General Laws, as appearing in the 2008 Official Edition, is
- 2 hereby amended by inserting the following section:
- 3 Section 79A. There shall be within the board of registration of psychologists a committee on
- 4 behavior analysts and applied behavior analysis. Members of the committee shall be appointed
- 5 by the board with the following qualifications: one member shall be a licensed psychologist who
- 6 is a member of the board, one member shall be a licensed psychologist who has been actively
- 7 involved with the practice of applied behavior analysis for at least four years, one member shall
- 8 be from the general public and shall not be engaged in or have a financial interest in the delivery
- 9 of health services, and four members shall be behavior analyst practitioners. Any of these
- 10 individuals may also be licensed psychologists or individuals licensed to provide mental health
- 11 services to the public from within other disciplines licensed by the commonwealth.

12 The board of registration of psychologists shall appoint four of the initial members to terms of  
13 three years, and three of the initial members to terms of two years. Thereafter, all appointees  
14 shall serve for terms of three years. The board shall fill vacancies with persons who possess the  
15 qualification required of the original appointees. Those members appointed to the initial  
16 committee as behavior analysts need not be licensed as behavior analysts. Such members so  
17 appointed after the initial committee is appointed shall be licensed under these provisions as  
18 licensed behavior analysts, prior to such appointment.

19 SECTION 2. Chapter 112 of the General Laws, as appearing in the 2008 Official Edition, is  
20 hereby amended in section 130 by inserting the following new definition:

21           “Applied Behavior Analysis”, a set of techniques derived from basic and clinical research  
22 in the psychology of learning. The techniques are employed therapeutically in an effort to  
23 control or reduce abnormal and maladaptive behaviors in specific populations, predominately  
24 children with severe developmental disabilities and autism, consistent with the psychological  
25 principles of operant conditioning and learning. Applied behavior analysis with the  
26 developmentally delayed and autistic populations includes conducting functional analyses of  
27 behavior seeking causes for the behavior, developing behavioral treatment objectives and goals,  
28 developing individual behavior change plans, using operant conditioning techniques in an effort  
29 to teach new skills, directing or monitoring the implementation of these plans, developing and  
30 implementing data collection systems and reviewing the data to monitor treatment effectiveness.  
31 The techniques represent a subset of psychological treatment methodologies, which along with  
32 other techniques within the field of psychology have proven helpful with these specific  
33 populations. Applied behavior analysis as a technical set of skills does not replace or in any way

34 obviate the need for broad clinical assessment, diagnosis and treatment of individuals with such  
35 disabilities.

36 SECTION 3. Chapter 112 of the General Laws, as so appearing, is hereby amended in section  
37 130 by inserting after the definition of “psychotherapy of a nonmedical nature” the following  
38 new definition:

39 “Licensed Behavior Analyst”, an individual who is trained in applied behavior analysis and who  
40 by training and experience meets the requirements of section 129E and possesses licensure as  
41 defined in section 129H. A licensed behavior analyst designs, implements, and evaluates  
42 environmental modifications in an effort to produce socially significant improvements in human  
43 behavior through skill acquisition and the reduction of problematic behavior in developmentally  
44 delayed or autistic individuals. Treatment plans shall be based on empirical research, including  
45 the direct observation and measurement of behavior as well as a functional behavioral  
46 assessment; and utilize antecedent stimuli, positive reinforcement and other consequences to  
47 produce behavior change.

48 SECTION 4. Chapter 112 of the General Laws, as so appearing, is hereby amended by inserting  
49 the following new sections:

50 Section 129C. The committee on behavior analysts and applied behavior analysis may adopt  
51 reasonable rules to carry out sections 129D to 129K, inclusive, and may amend and revoke such  
52 rules at its discretion. The committee shall keep a record of its proceedings and a register of all  
53 persons licensed by it. The register shall contain the name of every living licensee, his address,  
54 and the date and number of his license as a licensed behavior analyst. The committee shall  
55 develop criteria for the licensure of licensed behavior analysts, including both academic

56 qualification and supervised experience. Rules created by the committee shall be subject to  
57 approval by the board of registration of psychologists.

58 The committee shall meet not less than four times per calendar year. At the first meeting of each  
59 year, the committee shall elect a chairperson, vice-chairperson, and secretary.

60 Section 129D. A person who desires to be licensed as a licensed behavior analyst shall apply to  
61 the committee the manner prescribed by the committee. The applicant shall include statements  
62 under oath satisfactory to the committee, showing that he possess the qualifications preliminary  
63 to examination required by section 129E. He shall pay to the committee at the time of his filing  
64 such application a fee which shall be determined annually by the secretary of administration and  
65 finance under the provisions of section three B of chapter seven.

66 Section 129E. To be eligible for licensure by the committee as a licensed behavior analyst, an  
67 applicant shall make application to the committee upon such form and in such manner as the  
68 board shall prescribe and shall furnish evidence satisfactory to the board that such person:

69 (a) is at least eighteen years of age,

70 (b) is of good moral character,

71 (c) has a master's degree or higher degree from a regionally or nationally accredited college or  
72 university,

73 (d) has received his degree from within the department of psychology at the university, or other  
74 department designed specifically to train behavior analysts through the study of applied behavior  
75 analysis

76 (e) has coursework in the pursuit of that degree that is acceptable to the committee on behavior  
77 analysts

78 (f) has supervised experience in the practice of applied behavior analysis that is acceptable to the  
79 committee on behavior analysts

80 (g) has passed an examination in applied behavior analysis the form and content of which is  
81 determined by the board of registration of psychologists.

82 (h) At its discretion, the board of registration of psychologists and the committee may allow an  
83 applicant to substitute successful completion of the requirements of the Behavior Analyst  
84 Certification Board for the examination and supervised experience requirements.

85 (i) has passed a state jurisprudence examination

86 (j) conducts his professional activities in accordance with accepted standards including the  
87 Ethical Standards of Psychologists of the American Psychological Association and the  
88 Guidelines for Responsible Conduct of the Behavior Analyst Certification Board.

89 Section 129F. Licensed behavior analysts are trained to work with children and adults with  
90 severe developmental disabilities and autism. The scope of practice of the licensed behavior  
91 analyst includes conducting functional analyses of behavior seeking causes for the behavior,  
92 development of behavioral treatment objectives and goals, development of individual behavior  
93 change plans, using operant conditioning techniques utilizing reward and punishment in an effort  
94 to teach new skills, direct implementation of these plans and/or monitoring of the  
95 implementation of these plans, developing and implementing data collection systems and  
96 reviewing the data to monitor treatment effectiveness.

97 Applied behavior analysis as practiced by a licensed behavior analyst is a technical set of skills  
98 and does not replace or in any way obviate the need for broad clinical assessment and treatment  
99 of individuals with such handicaps. Provision of services by a licensed behavior analyst  
100 expressly excludes psychological testing, psychotherapy, cognitive therapy, cognitive behavior  
101 therapy, neuropsychology, sex therapy, psychoanalysis, hypnotherapy, both long and short-term  
102 counseling as treatment modalities and any mental health treatment modality not directly related  
103 to operant conditioning and applied behavior analysis. The licensed behavior analyst works  
104 exclusively as a member of a clinical or educational treatment team, within a school system, a  
105 licensed clinic or a licensed day treatment or residential program working with children and  
106 adults with developmental disabilities and or autism. Services may be provided within a home  
107 setting, providing they are under the auspices of a school system, licensed clinic or licensed day  
108 treatment or residential treatment program for developmentally delayed or autistic individuals.

109 Unless the licensed behavior analyst is also licensed by the commonwealth in a mental health  
110 field whose scope of practice includes the diagnosis of mental disorders, the scope of practice of  
111 the licensed behavior analyst does not include the diagnosis of mental, emotional or behavioral  
112 disorders. Prior to the implementation of a behavioral treatment plan for any individual, the  
113 licensed behavior analyst who is not also licensed in a field whose scope of practice includes the  
114 diagnosis of mental, emotional and behavior disorders, must assure that an appropriate medical  
115 and psychological evaluation of the individual has been conducted, by appropriately licensed  
116 individuals, and obtain a written referral from those professionals that treatment by a licensed  
117 behavior analyst with techniques of applied behavior analysis represents an appropriate primary  
118 or adjunctive treatment modality for that individual's current presentation. Such a licensed  
119 behavior analyst is required to maintain a documented, ongoing consultative relationship as

120 defined by regulation of the committee with the referring licensed provider relative to  
121 appropriateness of treatment, duration of treatment, progress and the need for further evaluation  
122 of the individual.

123 Section 129G. The committee shall examine applicants for licensure as a licensed behavior  
124 analyst at least annually in such places as it may determine commencing in calendar year two  
125 thousand and twelve. The examination may be written and or oral and shall test the applicant's  
126 competency in and knowledge of the theory and practice of behavioral psychology, applied  
127 behavior analysis, behavioral measurement, functional analysis, reinforcement theory, single  
128 subject design, and theory underlying behavioral treatment methodology. Additionally,  
129 applicants will be examined for knowledge of ethics and relevant Massachusetts law. The  
130 committee shall determine the type of examination. Substitution of this requirement with  
131 certification by the Behavior Analyst Certification Board may be permitted as described in  
132 section 129E. Any applicant who fails to pass such examination may take a second examination  
133 upon the payment of an additional application fee that shall be determined annually by the  
134 commissioner of administration and finance under the provisions of section 3B of chapter 7, and  
135 must be so re-examined at the next scheduled examination. Upon failure of an applicant to pass  
136 a second examination, the committee may require him to complete additional courses of study as  
137 designated by the committee, in which case he shall be required, before taking another  
138 examination, to present to the committee satisfactory evidence of having completed the required  
139 additional courses, and shall pay the re-examination fee as noted above.

140 Section 129H. The committee shall license as a licensed behavior analyst each applicant who  
141 proves to the satisfaction of the committee his fitness for licensure under the provisions of  
142 sections 129D to 129E, inclusive. It shall issue to each person so licensed, a license, which shall



143 be prima face evidence of the right of such person to represent himself as a licensed behavior  
144 analyst and authorized to use the initials L.B.A.

145 Section 129I. The director of professional licensure shall determine the renewal cycle and  
146 renewal period for all licenses issued by the committee. Persons licensed in accordance with  
147 these sections shall apply to the committee for renewal of their licenses on or before the  
148 expiration date, as determined by the director, unless such license was earlier revoked, suspended  
149 or canceled as a result of a disciplinary proceeding instituted pursuant to this chapter.  
150 Applications for renewal shall be made on forms approved by the committee and accompanied  
151 by payment of a renewal fee, as determined by the secretary of administration and finance  
152 pursuant to section 3B of chapter 7. All licensing and application fees and civil administrative  
153 penalties collected pursuant to sections 129D and 129G, shall be deposited into the trust fund  
154 established in section 35V of chapter 10.

155 Section 129J. The committee may, after a hearing pursuant to chapter thirty A, revoke, suspend,  
156 or cancel the license of a licensed behavior analyst, or reprimand or censure a licensed behavior  
157 analyst if it finds upon proof satisfactory to the committee that such licensed behavior analyst:

158 (a) fraudulently procured licensure as a licensed behavior analyst;

159 (b) violated any provision of law relating to practice as a licensed behavior analyst, or any rule or  
160 regulation adopted hereunder;

161 (c) acted with gross misconduct in practicing as a licensed behavior analyst or of practicing  
162 fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross  
163 negligence on a particular occasion or negligence on repeated occasions;

164 (d) practiced as a licensed behavior analyst while the ability to practice was impaired by alcohol,  
165 drugs, physical disability or mental instability;

166 (e) was habitually drunk or being or having been addicted to, dependent on, or a habitual user of  
167 narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;

168 (f) knowingly permitted, aided or abetted an unlicensed person to perform activities requiring a  
169 license for purposes of fraud, deception or personal gain;

170 (g) has been convicted of a criminal offense that reasonably calls into question the ability to  
171 practice as a licensed behavior analyst;

172 (h) violated any rule or regulation of the board or the committee;

173 (i) acted in a manner that is professionally unethical according to ethical standards of the  
174 American Psychological Association or the Behavior Analyst Certification Board.

175 No person filing a complaint or reporting information pursuant to this section or assisting the  
176 committee or board at its request in any manner in discharging its duties and functions shall be  
177 liable in any cause of action arising out of receiving such information or assistance, providing the  
178 person making the complaint or reporting or providing such information or assistance does so in  
179 good faith and without malice.

180 Section 129K. Any person who practices applied behavior analysis in the commonwealth  
181 without a license or practices applied behavior analysis without license to provide mental health  
182 services, shall be punished by a fine of not less than \$100 nor more than \$1,000 or by  
183 imprisonment for not more than three months, or both. Nothing in this statute shall prevent the  
184 practice of applied behavior analysis within school, residential or day treatment settings or state-

185 operated facilities by individuals trained to provide such services, providing (1) they do not hold  
186 themselves out as licensed behavior analysts (2) they are licensed by the commonwealth as  
187 educators or providers of mental health services, such as psychologists, psychiatrists and social  
188 workers practicing within their scope of practice and training or (3) they are working under the  
189 direct clinical supervision of an individual who is licensed by the commonwealth as an educator  
190 or as a provider of mental health services, such as a psychologist, psychiatrist or social worker  
191 practicing within their scope of practice and training.

192 The committee may petition in any court of competent jurisdiction for an injunction against any  
193 person practicing as a behavior analyst without a license. Such injunction may be issued without  
194 proof of damage sustained by any person. Such injunction shall not relieve such person from  
195 criminal prosecution for practicing without a license.

196 Section 129L. A person who does not possess a valid license as a licensed behavior analyst  
197 pursuant to the provisions of this statute, shall not represent himself as a “behavior analyst” or  
198 “licensed behavior analyst.”

199 SECTION 5. Nothing in this act shall prevent other mental health practitioners licensed by the  
200 commonwealth from engaging in the practice of applied behavioral analysis or functioning as a  
201 behavior analyst, if it is already within their scope of practice under their existing license and  
202 they are practicing within the scope of their training and experience.